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June 17, 2002

**HAND DELIVERY**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12th Street, SW  
Washington, DC 20554

**RECEIVED**

**JUN 17 2002**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: Easterbrooke Cellular Corporation  
CC Docket No. 94-102  
Petition for Waiver

Dear Ms. Dortch:

Enclosed herewith are an original and four copies of Easterbrooke Cellular Corporation's Petition for Waiver of the June 30, 2002 deadline for implementation of the requirement to transmit 911 calls through TTY devices. Easterbrooke seeks a 90-day extension of the June 30, 2002 deadline.

Please refer questions regarding this petition to this office.

Cordially yours,



Michael F. Morrone

Enclosures

**BEFORE THE**

Federal Communications Commission

WASHINGTON, DC 20554

**RECEIVED**

JUN 17 2002

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**In the Matter of**

**EASTERBROOKE CELLULAR  
CORPORATION**

**Revision of the Commission's Rules  
to Ensure Compatibility with Enhanced  
911 Emergency Calling Systems**

**CC Docket No. 94-102**

**Petition for Waiver of Deadlines**

**To: Chief, Wireless Telecommunications Bureau**

**PETITION FOR WAIVER**

Easterbrooke Cellular Corporation ("Easterbrooke"), by its attorneys, in accordance with Section 1.3 of the Federal Communications Commission's ("Commission") Rules, 47 C.F.R. §1.3, hereby respectfully requests, in view of the requirements imposed by the *Fourth Report and Order*<sup>1</sup> in the above-captioned proceeding and of Section 20.18(c) of the Commission's Rules, a waiver of the June 30, 2002 deadline by which carriers employing digital wireless systems must be capable of transmitting 911 calls from individuals with speech or hearing disabilities via means other than conventional mobile radio handsets, *e.g.*, through the use of text telephone ("TTY") devices.

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<sup>1</sup> In the Matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, *Fourth Report and Order*, CC Docket No. 94-102, 15 FCC Rcd 25216, 65 Fed. Reg. 82293 (December 28, 2000), ("*Fourth Report and Order*").

## I. BACKGROUND AND INTRODUCTION

Easterbrooke provides analog and time division multiple access (“TDMA”) digital cellular service in the West Virginia 5 Rural Service Area (“RSA”), a region that includes the counties of Tucker, Randolph, Upshur, Webster, Braxton, Clay, Nicholas, and Pocahontas. With the exception of Tucker County, all of the other aforementioned Appalachian counties are deemed “distressed” (*i.e.* persistently economically distressed) counties under Federal law.<sup>2</sup>

In the *Fourth Report and Order*, the Commission designated June 30, 2002 as the deadline for digital wireless service providers to manifest the capability of transmitting 911 calls made via use of TTY devices.<sup>3</sup> As set forth herein, Easterbrooke has engaged in a lengthy negotiation process with Nortel Networks Corporation (“Nortel”), its infrastructure provider, to obtain and have installed the necessary software to allow for 911 access through TTY devices at a reasonable cost to Easterbrooke. Due to the length of those negotiations, and given Nortel’s already cramped schedule of installations and upgrades for other carriers seeking to meet the June 30, 2002 deadline, Nortel has told Easterbrooke that it will not be able to install and test Easterbrooke’s 911 access through TTY software until June 20, 2002. Although Nortel has stated it will work to meet the June 30, 2002 deadline, Easterbrooke believes that, out of an abundance of caution, it should seek a short, reasonable extension of the deadline for compliance to September 30, 2002.

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<sup>2</sup> See 40 U.S.C. App. §226.

<sup>3</sup> *Fourth Report and Order*, Para. 1.

## II. DISCUSSION

### A. Basis for a Waiver of the June 30, 2002 Deadline

The Commission may grant a waiver for “good cause shown.”<sup>4</sup> Under Sections 1.925(b)(3)(i) and (ii) of the Commission’s Rules, alternative standards have been established for justifying rule waiver grants. Either (1) the “underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest” or (2) “in view of the unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest or the applicant has no reasonable alternative.”<sup>5</sup> Easterbrooke respectfully submits that application to it of the aforementioned June 30, 2002 deadline not only would be contrary to the public interest and burdensome, but also would leave Easterbrooke with no reasonable alternative than to accede to the timeline of its infrastructure provider, Nortel. Hence, as will be demonstrated herein, the instant petition meets one of the two alternative standards for issuance of a waiver.

### B. Easterbrooke Has No Reasonable Alternative.

Easterbrooke is currently operating on Nortel MTX07 software and can achieve TTY compatibility with an upgrade to MTX10, which Nortel has now agreed to provide to Easterbrooke. Since the publication of the *Fourth Report and Order*, Easterbrooke has worked diligently to procure the necessary software and hardware to provide TTY access to 911 and to ensure that the software and hardware upgrades would be installed by the aforementioned deadline. Nortel has recently advised Easterbrooke, however, that it will work to complete installation and testing of the requisite upgrades by June 20, 2002, ten days short of the

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<sup>4</sup> 47 C.F.R. §1.3.

<sup>5</sup> 47 C.F.R. §1.925(b)(3)(i), (ii).

compliance deadline. Easterbrooke's system is completely based upon Nortel's infrastructure system, and there are no alternate suppliers of the required hardware/software combinations necessary for TTY capability available to Easterbrooke unless it is prepared to completely retool its entire network. Unfortunately, even if Easterbrooke were so inclined to effectuate a transition to a completely new equipment and software vendor, the necessary hardware and software could not be delivered, installed and tested before June 30, 2002. Easterbrooke must rely on Nortel to provide and install the requisite upgrades and must work according to Nortel's schedule. Easterbrooke has no reasonable alternative to Nortel's schedule for installation. Because of this reliance on Nortel's schedule, combined with the extremely close proximity to the deadline for Nortel's scheduled completion of the required upgrades, Easterbrooke herein seeks a short extension of the compliance deadline.

**C. Application of the June 30, 2002 Deadline Would be Unduly Burdensome and Inequitable to Easterbrooke.**

Enforcement of the June 30, 2002 911/TTY compliance deadline on Easterbrooke would subject it to an undue burden because Easterbrooke, since its inception, has not received a single customer inquiry regarding TTY on its network. However, even if there were such a subscriber, grant of this waiver request would not impede such individual from continuing to operate on an analog handset equipped with a TTY device.

Additionally, the fact that there is only one PSAP currently functioning in the West Virginia 5 RSA (and that PSAP has informed Easterbrooke that it is currently unable to handle digital TTY calls) in essence means that there is no public safety authority available to coordinate TTY access with Easterbrooke. Indeed, the lack of wireline 911 access in significant areas of West Virginia attests to the fact that TTY access will likely not benefit potential users of

TTY capable digital devices in that geographic region. Nonetheless, Easterbrooke is working diligently to manifest 911 capability through TTY devices as soon as possible.

**D. Issuance of the Waiver Sought Will Not Be Contrary to the Public Interest.**

A 90-day deferral of the mandatory implementation date will allow for additional time for Easterbrooke to work with Nortel to ensure that the required hardware and software upgrades are installed properly and work as expected. Deferral of the implementation deadline will serve the public interest, allowing time for Easterbrooke to have the system properly upgraded to provide TTY services. Even if the system were deployed by the June 30, 2002 deadline, Easterbrooke would likely find no requests in the foreseeable future for its use from customers. Indeed, Easterbrooke has received no requests for any TTY services from customers since it first embarked upon the provision of cellular services in the West Virginia 5 RSA. Much of West Virginia is without wireline 911 access due to the local public safety climate, and only one of the eight counties in Easterbrooke's service area currently has a PSAP for Easterbrooke to answer to regarding 911 calls, while Easterbrooke sends 911 calls in the other counties to local sheriffs' offices. Therefore, even if Easterbrooke were to fully implement the required TTY capability by June 30, 2002, it is highly unlikely that any end users could benefit from the service for the foreseeable future.

In the final analysis, granting the instant petition will allow for financial resources that would have been expended in payment of potential Commission fines for 911/TTY noncompliance to be allocated to building out Easterbrooke's main network systems, thereby improving service quality for existing customers. Given the fact that Easterbrooke must work within the schedule presented to it by Nortel, it would serve the public interest to waive

Easterbrooke's June 30, 2002 deadline for meeting the TTY compatibility requirements on its TDMA system.

**E. Magnitude of Waiver Requested**


Easterbrooke respectfully requests a 90-day waiver of the June 30, 2002 deadline. Easterbrooke will work diligently to implement the TTY requirements by September 30, 2002. This short extension of the implementation deadline will likely affect none of Easterbrooke's customers who may potentially require TTY access, largely because even if such customers existed, they could not, any more than Easterbrooke's non-TTY customers, take advantage of any 911 access, given the current lack of a PSAP presence in the West Virginia 5 RSA.

**III. CONCLUSION**

The foregoing demonstrates and explains the special circumstances that warrant a grant of the waiver sought herein and satisfies the Commission's requirements for a showing thereof. Accordingly, Easterbrooke respectfully submits that good cause has been manifested for the waiver and extension of time requested.

Respectfully submitted,

EASTERBROOKE CELLULAR  
CORPORATION

By:   
Michael F. Morrone

*Its Attorney*

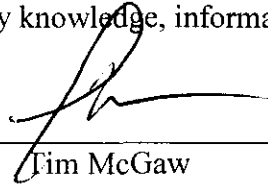
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Date: June 11, 2002



## DECLARATION OF TIM MCGAW

I, Tim McGaw, Vice President of Easterbrooke Cellular Corporation, do hereby declare under penalty of perjury that I have read the foregoing Petition for Waiver and that the facts stated therein are true and correct, to the best of my knowledge, information and belief.



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Tim McGaw

Dated: June 12, 2002

## CERTIFICATE OF SERVICE

I, Cassandra L. Hall, do hereby certify that copies of the foregoing pleading were sent, via first class mail, postage pre-paid, this 17<sup>th</sup> day of June, 2002, to the following:


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Cassandra L. Hall